

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 641 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAVAL SHIVABHAI MOHANBHAI

Versus

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Appearance:

MR MEHUL SHARAD SHAH for Petitioner

MR AMIT M PANCHAL for Respondent No. 1

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CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 25/04/2000

ORAL JUDGEMENT

#. r.Mehul Sharad Shah, for the petitioner and Mr.Amit Panchal, for the respondent. Rule. Mr.Amit Panchal waives services of rule. With the consent of the parties the matter is taken up for final disposal.

#. The present petition is filed by the petitioner for not considering the two representations made by the petitioner, one in the month of February, 1997 and another in the month of January, 1998. By these two representations the petitioner had prayed for that after the petitioner came to be reinstated on 7.10.96, the authority ought to have passed an order treating the petitioner on duty during the period of suspension i.e. 9.4.1991 to 7.10.1996. Mr.Shah, the learned advocate for the petitioner submitted that an FIR was filed on 7.2.1999 and order of suspension came to be passed on 6.4.1991 but the same was received on 9.4.1991 and from that date the petitioner was under suspension till 7.10.96. Pursuant to the FIR, criminal proceedings were initiated and during the pendency of the criminal proceedings the department decided to reinstate the petitioner by an order dated 7.10.1996. The criminal proceedings which were pending against the petitioner resulted in an acquittal by a judgment and order dated 30.1.1997.

Mr.Shah submitted that the department has not held any departmental inquiry against the petitioner. However, a Criminal Appeal being No.237/97 is filed before this court and the same is pending for final disposal. Mr.Shah submitted that as the petitioner was reinstated in 1996 and that to prior to the completion of the criminal trial, the authority ought to have decided to treat the period of suspension of the petitioner as period spend on duty. But in spite of petitioner filing two representations mentioned hereinabove the authority did not decide to do so and therefore the present petition is filed. The petitioner prays that a direction should be issued to the respondent to grant the petitioner all the consequential benefit including the payment of salary and allowance for the period of suspension i.e. from 9.4.1991 to 7.10.1996.

#. Mr.Amit Panchal, learned advocate appearing for the respondent submitted that the facts of the present case are identical to that of a case which was considered by a division bench of this Hon'ble Court. Mr.Amit Panchal places reliance upon a judgment and order in Letters Patent Appeal No.1681/99 in Spl.C.A. No.9527/99 (Coram Acting CJ Mr.C.K.Thakkar and Mr.D.P.Buch,J ) dated 13.12.1999. The facts of that case are set out in para 3 which reads as under :-

" It appears that after the appellant was acquitted, an order of reinstatement was passed in his favour on September 6, 1995 - (Annexure

`C' to the petition). The appellant, in view of the acquittal recorded by the Special Judge was ordered to be reinstated on certain terms and conditions. One of the conditions provided that since a decision was taken to challenge the order of acquittal recorded by the trial court by filing an appeal in the High Court of Gujarat, the appellant would be bound by the decision which would be rendered by the High Court of Gujarat in the meanwhile he will not claim regularisation of the period of suspension. The appellant was actually reinstated on 30.9.1995 but he did not give undertaking which was to be given as per the terms and conditions of the order of reinstatement Annexure`C'. Hence, a communication came to be issued on 12.9.1996 Annexure`D'/ The appellant, by a letter on September, 18, 1996 informed the department that he would not insist for regularisation of his services till the appeal filed against him will be finally disposed of (Annexure `E' to the petition).

#. The said judgment deals with the contention raised on behalf of the appellant original petitioner of the said petition in para 4 and 5 which are also set out for the ready reference;

"4. Thereafter, the appellant had made prayer for regularisation of his services in accordance with the provisions of Rule 1532 of the Bombay Civil Services Rules, 1959 (hereinafter referred to as `the Rules'). The said prayer was rejected by the authorities against which the petition was filed.

5. According to the authority, as an appeal against the order of acquittal is preferred, admitted and is pending before the High Court of Gujarat, no prayer for regularisation of services of the petitioner can be granted.

#. The Hon'ble division bench was considering the provisions of Rule 152 of BCSR in detail after setting out the same and after considering them it observed in para 10 as under;

"In our opinion, the only interpretation which can be given to the above rule is that the proceedings must have been finalised and the authority must have formed an opinion that the suspension of the government servant was "wholly

unjustified". It is true that in the case on hand, the appellant was acquitted by the Special Judge, Bhavnagar. But it is equally true that an appeal against order of acquittal is filed by the State of Gujarat which is already admitted and awaits final hearing. The question whether or not the appellant was properly acquitted by the Special Judge, Bhavnagar, is at large before this court. In our considered opinion. therefore, the acquittal recorded against the appellant cannot be said to be final and Ruyle 152 of the Rules cannot be pressed in service at this stage.

#. In my opinion, the facts of the case before the division bench and the facts of the present case are identical and therefore the ratio of the said judgment squarely applies. In the result this petition is required to be rejected.

#. Mr.Shah relied upon the judgment of this court reported in 1983 (2) G.L.R. 1315. The said decision has no application to the facts of the case on hand in as much as in the facts of that case after the petitioner was acquitted in criminal case he approached this court by Spl.C.A. wherein this court (Coram : P.D.Desai,J) issued rule and directed the respondents therein to reinstate the petitioner in service forthwith and to permit him to report for duty with effect from opening of the office hours on 30.12.1982 and to give him appropriate posting upon his so reporting for duty.

#. It was this direction, that came to be challenged in the aforesaid LPA on the ground that the respondents have a power to suspend the petitioner during the pendency of an acquittal appeal, which was filed by the respondents. The court negatived that contention and upheld the direction issued by the learned single judge. The court was not considering the question of "regularising the period of suspension" during the pendency of an acquittal appeal whereby the proceedings can be said to have not finalised either before the learned single judge or before the division bench. The said authority is of no assistance to the learned advocate for the petitioner.

#. Mr.Shah also relied upon two judgments of the Hon'ble the Supreme Court, reported in 1981 (2) SCC 714 and AIR 1984 Supreme Court 380. Mr.Shah, submitted that the aforesaid decisions are applicable to the facts of the present case and hence the relief as prayed for is required to be granted. The perusal of the said authorities reveals that none of them are applicable to the facts of the present case and hence the same are not

discussed at length. In the result the petition is rejected. Rule is discharged.

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